SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

No. 73-895

In the Supreme Court of the United States

OCTOBER TERM, 1973

MERRILL T. LANDWEHR, TRUSTEE IN BANKRUPTCY FOR RAYMOND CHESTER MILLER, BANKRUPT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

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OPINIONS BELOW

The opinion of the district court (Pet. App. B, pp. 44-46) is not officially reported. The opinion of the court of appeals (Pet. App. B, pp. 35-43) is reported at 485 F. 2d 74.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 1973. The petition for a writ of certiorari was filed on December 6, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a proof of claim filed by the United States more than six months after the date of the first meeting

of creditors but prior to the date set by the bankruptcy referee for the filing of such claims was timely.

STATUTE INVOLVED

Section 57n of the Bankruptcy Act, as amended, 11 U.S.C. 93(n), is set forth at Pet. App. A, p. 33.

STATEMENT

Raymond C. Miller filed a voluntary petition in bankruptcy in the United States District Court for the Southern District of Florida on January 31, 1968. On March 19, 1968, the bankruptcy referee mailed to all creditors, including the Internal Revenue Service, a notice that the first meeting of creditors would be held on April 4, 1968, and that the last day for filing proofs of claim against the bankrupt estate would therefore be October 4, 1968.

At the first meeting of creditors, the referee determined that, for the convenience of the parties, the proceeding should be conducted in Louisiana. Accordingly, on May 6, 1968, the district court transferred the proceeding to the Eastern District of Louisiana.

On July 18, 1968, the bankruptcy referee for the United States District Court for the Eastern District of Louisiana sent out to all creditors, including the Internal Revenue Service, another notice of a first meeting of creditors for August 6, 1968, and set February 6, 1969, as the last day for filing. The Internal Revenue Service filed a proof of claim for income taxes prior to the expiration of the latter date.[1]

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[1]The Internal Revenue Service initially filed a proof of claim for $280,850.79, for income taxes owing by the bankrupt for the years 1966 and 1967. That claim was subsequently reduced to $90,492.98 for the year 1967 only.

The referee disallowed the government's claim as untimely, holding that the first bar date set by the referee in Florida was controlling. The district court reversed, stating that "the Florida court's notice was rendered nugatory by the transfer of the matter to Louisiana, and that the later bar date established by the Louisiana court order was controlling" (Pet. App. B, p. 37). The court of appeals sustained the district court's judgment on equitable grounds, stating that "the [Louisiana] Referee had the power to extend the time for filing a Government claim, and that, having received a notice in the apparent exercise of that power, the Government was entitled to rely thereon" (Pet. App. B, p. 36).

ARGUMENT

The courts below properly allowed the government to file its proof of claim following expiration of the initial six-month period under Section 57n of the Bankruptcy Act, 11 U.S.C. 93(n). The government had relied upon an express order of the bankruptcy court purporting to extend the time for filing. Whether or not that order was otherwise valid,[2] once the government had acted in justifiable reliance on it by filing within the period set by the order, it would have been inequitable for the court to bar the government's claim on the ground of untimeliness. Thus, the remedy upheld by the court of appeals was a proper exercise of the bankruptcy court's general equitable powers. See, generally, *Katchen* v. *Landy*, 382 U.S. 323; *Bank of Marin* v. *England*, 385 U.S. 99; *Young* v. *Higbee Co.*, 324 U.S. 204; *Pepper* v. *Litton*, 308 U.S. 295.

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[2]We believe that the order was valid and that it could properly have been sustained either as an extension for filing government claims authorized by Section 57n or as a general extension to all creditors necessitated by the disruption in the proceedings resulting from the change of venue and appointment of a new referee.

Petitioner argues that there is a conflict among the courts of appeals on the question whether equitable discretion exists to permit late filing under Section 57n. But the unique circumstances of this case distinguish it from the cases of inadvertent late filings relied upon by petitioner. Unlike the creditors in those cases, the government there relied on, and complied with, the bankruptcy court's own order.

Moreover, the government's reliance on the bankruptcy court's order was justifiable. The court was explicitly authorized by Section 57n to grant an extension of time for filing government claims, and the government reasonably construed the order setting a new filing date as a valid extension under that provision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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